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INDETERMINATE SENTENCE, RELEASE ON PAROLE, AND PARDON.

(Report of Committee F of the Institute.)

EDWIN M. ABBOTT, CHAIRMAN.¹

The system of indeterminate sentence and release on parole in the administration of justice has been developing during the last year, more than your committee anticipated. States which heretofore had only considered the matter casually have now taken it up and enacted legislation establishing the system, or have amended existing laws to meet new conditions which have arisen since the original introduction of some phase of these laws. There are other states that have not considered this work, and it is in these fields that your committee is sowing seed, hoping to reap a harvest of additional legislation when the legislatures next convene.

In our report last year we noted that Rhode Island had authorized the appointment of a committee to draft laws covering the various subjects of probation, indeterminate sentence and parole. For some reason this legislation was rejected, but those who are interested in that state say it surely will pass within the next session.

Louisiana, although not adopting the indeterminate sentence system, on July 8 of this year provided for the paroling of prisoners.

Missouri has adopted parole and established a parole board; Maryland, Tennessee and Utah practically adopted the entire system.

In West Virginia we find that the parole of prisoners has existed since 1909. The Governor designates two persons who, with the warden of the penitentiary, constitute the board. They require a written report and recommendation from the prison authorities and the physician. A statement of facts must come from the prosecuting attorney and trial judge. All must set forth their reasons for or

¹The complete committee is as follows: Edwin M. Abbott, Esq., chairman; Prof. Charles R. Henderson, Chicago; Edward Lindsey, Esq., Warren, Pa.; Hon. Robert Ralston, Philadelphia; Samuel W. Salus, Esq., Philadelphia; Rev. Samuel G. Smith, St. Paul; Major Richard Sylvester, Washington; Warden Henry Wolfer, Stillwater; Hon. Frank L. Randall, Boston; Warden E. J. Murphy, Joliet, Ill.; Warden J. C. Sanders, Fort Madison, Ia.

against parole. The board considers three things: (a) whether the applicant has reformed; (b) whether he has been sufficiently punished, and (c) will he be a peaceable and law-abiding citizen in the future. It is further stipulated that no illiterate person, unless past 30 years of age at time of sentence, will be paroled. The prison school furnishes ample opportunity for education, and all illiterate persons must avail themselves of its advantages before they can present an application. Oral argument is never heard, and attorneys are not encouraged to appear before the board. Employment with responsible and reputable persons, and the furnishing of a bond of \$50 with one or more sureties, or the depositing with the warden of \$25 in cash to be used toward defraying the expense of arrest, should the convict break his parole, is required. The indeterminate sentence is not a separate law. It is considered in the paroling of a prisoner, in that the minimum sentence upon the statute books for the particular crime must have been served before the application can be presented. This establishes an indeterminate sentence law fixing the minimum and maximum as prescribed by statute for the particular offense.

TENNESSEE has adopted a system of the indeterminate sentence and release upon parole applicable to prisoners sentenced to the penitentiary. Any person over 18 years of age, convicted of felony, receives an indeterminate sentence, the maximum term not to exceed, nor the minimum not to be less than that provided by law, with a reduction for good behavior, graded according to the present commutation law. Sentences for two or more separate offenses shall be pronounced separately, the minimum and maximum terms applying to each sentence, and to be construed as a continuous term of imprisonment. The board of prison commissioners become the board of parole, with full power to release on parole any person having served time equal to the minimum sentence less commutation for good behavior. Prisoners sentenced for life serve a minimum of 25 years less commutation for good behavior. All convicts on parole remain under the control of the board, and must remain in the state within a specified territory. No petitions of any kind or argument are heard from attorneys or persons not connected with the penitentiary. The history, physical and mental condition and character of the prisoner is considered by the board. Parole officers will look after the prisoners and report to the board. Each paroled prisoner must keep in communication with the parole officer and the board may recommend final discharge to the Governor at any time they decide that he will become a law-abiding citizen and remain such. A unique feature is provided in that it is the duty of all public officers of the state and all municipal officers of the city to aid the parole board and its officers in supervising the conduct of pris-

oners on parole, and reporting as to their conduct and whereabouts. This is a decidedly undesirable feature, transferring the duties of parole officers to the police. No good can possibly result therefrom.

In PENNSYLVANIA, during the past year, the privilege of parole was extended to convicts in the state penitentiary serving sentences imposed prior to the enactment of the parole laws, provided they had served one-third of their sentence.

The regulation of the board of inspectors of penal institutions that a sponsor must be secured for any convict about to be discharged, was restricted by statute in that the board may procure a sponsor for the prisoner or may require reports from the prisoner himself in lieu of the sponsor.

In LOUISIANA, difficulty has been encountered in introducing this system. The indeterminate sentence law was not passed, but a parole act finally carried, and secures a board of control for state penitentiary, and allows paroling of first offenders who had not been convicted of treason, arson, rape, attempt to commit rape, or crimes against nature. No prisoner is eligible for parole until he has served one calendar year, and no parole shall be granted to any convict serving a life sentence until he shall have served at least one-third of the actual time he would have served if classed as eligible for reduction of sentence under the laws of Louisiana. In case of "life terms" the parole must be approved by the board of pardons. No provision is made for parole officers, but the board may designate its members or employees to investigate complaints as to the violation of parole. Prisoners are compelled to report to the sheriff of the parish where he lives, and the sheriff then reports to the board of control. This is another weak substitution for the humane work of the parole officers.

In OHIO the indeterminate sentence was made general, and now applies to sentences in the penitentiary on the same line as heretofore applicable to the reformatory.

In NEW MEXICO an act passed which increases commutation for good behavior for all convicts who are entitled at various dates to a reduction of time of their indeterminate sentence. Thus, by their own efforts they become eligible for parole at an earlier period.

In NEW JERSEY a most original change was made. The act of 1913 creating a board of parole of inmates of the state prison was repealed, and a new act was immediately passed re-enacting the indeterminate sentence and parole system, and transferring the supervision of the same to the board of inspectors of the prison. The maximum and minimum terms are to be set forth in the sentence, the maximum term is the maximum as provided by law, and the minimum term shall

not be less than one year, and not more than two-thirds of the maximum. Commutation from a death sentence to imprisonment for life is to be construed as a minimum term of 15 years, with the proviso that every prisoner confined for a term of over one year or for life whose record is good, and who has served one-third of the total for which he was sentenced, or, in case of a life sentence, who has served not less than 15 years, may be eligible for parole.

The board determines the terms and conditions of parole; can prolong the minimum term of such prisoners as they deem it unwise or dangerous to release; can postpone from time to time until the prisoner has served the maximum sentence if necessary. A parole agent is empowered to represent the board of inspectors, but the board alone is given the full and final authority to grant and revoke parole.

In MISSOURI a board of pardons and parole is authorized, composed of three persons appointed by the Governor. They make recommendations to the Governor. The petition must be supported by statements from the trial judge, prosecuting attorney, and the jury can also recommend such mercy. All persons are subject to the benefits of the act. Considering parole, the previous history, physical and mental condition, character, prison conduct and mitigating circumstances govern. The conditions of parole are steady employment, abstinence from bad associates and intoxicants. The law also applies to all prisoners confined at the time of the passage of the act. The right is also reserved to the Governor, who still exercises his constitutional rights of pardoning.

In MARYLAND, on April 16, 1914, the Parole Act became law. Under its terms an advisory board of parole was established consisting of three members who were named in the Act, for periods of six, four and two years each; the Governor to fill vacancies with the advice and consent of the Senate. The board has the power to visit all the Institutions in the state, to summon witnesses and take testimony, and to make all rules and regulations relative to the paroling of prisoners. The board shall recommend to the Governor, if the interest of the state and the interest of any prisoner will be best subserved, when to grant a conditional pardon or parole to any prisoner now in any of the penal institutions. The board also supervise the actions of any person paroled under suspended sentence by any court. The members of this Board are paid salaries. All convicts are compelled to report to a sponsor; to live within a restricted district; to make written reports monthly; to abstain from visiting saloons or taking intoxicants; that he will work honestly and diligently; and that he will live and remain at liberty without violating the laws.

These changes practically cover the advance made by the system during the year.

Indemnity to Persons Wrongly Convicted.—This committee has also been asked to consider the question of indemnity to prisoners erroneously convicted for crime. We had but a short time to study this subject. We respectfully report as follows:

The case of one who has been improperly convicted and improperly imprisoned, and who after many years of suffering and incarceration has been finally liberated, has been presented numerous times in history despite the boast of our law that it is better that ninety-nine guilty ones escape than that one innocent person be convicted. The late Dr. Sello of Germany, has collected several hundred cases into one volume, touching this subject. There are many cases in this country which have been particularly impressive; those cases being Beck, Edalji and Toth, the latter case occurring a short time ago in the state of Pennsylvania. To become convinced that error has been made, and that an innocent man has suffered a long term of imprisonment, and then to suddenly liberate him without any indemnification or compensation for the injuries he has suffered, is one of the barbarisms of our present-day laws which do not provide what little return can be made for the error committed.

In the states of California and Wisconsin, compensation laws have already been enacted.

On May 8th, 1913, the state of Wisconsin was the first to act definitely. This law provided that the Governor and members of the state board of control constitute a board of relief for persons who have served terms of imprisonment upon a conviction for an offence or crime against the state of which they are innocent. Compensation is provided for wrongful imprisonment after a public hearing, and they may award compensation to the prisoner not to exceed \$5,000 and at the rate not greater than \$1,500 a year. If the board find they cannot award an amount adequate to cover the loss to the prisoner they may recommend to the legislature by petition the proper amount to be awarded.

The finding and award of the board are subject to review on an appeal to the Surrogate Court for the county.

The Secretary of State is empowered to pay the money out of the State Treasury upon proper certificate from the board.

On May 24th, 1913, California passed a similar Act providing for \$5,000 maximum, but with no limitation as to yearly compensation. But both of these states had been anticipated in this altruistic action by a bill introduced in the Senate of the United States on December

13th, 1912, by Senator Sutherland. This Act provides also for indemnification for erroneous conviction and imprisonment to the Court of Claims who, having satisfactory proof, can award a proper sum not to exceed \$5,000.

Your committee would recommend that such an Act is a fitting correlation to the indeterminate sentence and parole law. Some proper tribunal in every state should have the power not only to pardon those erroneously convicted, but also to immediately provide some system for attending to their wants and alleviating their distress. No action can entirely expunge the record of a long term in prison from the memory of the convict, and it is only fair and equitable that a system of pecuniary recompense should be provided for one who has been so grievously injured.

APPENDIX.

QUESTIONS.

1. Who may be committed under the indeterminate sentence?
2. Provisions for maximum and minimum term.
3. Parole board.
4. Duties of parole board.
5. Regulation of petition or argument.
6. Prisoners eligible to parole.
7. Points considered in granting parole.
8. Conditions of parole.
9. What constitutes violation of parole?
10. System of arrest for violation of parole and fees attached thereto.
11. Penalty for violation of parole.
12. Conditions for final discharge of prisoners from parole.
13. How paroled prisoner is finally discharged.
14. Number of violations of parole.
15. Extent of parole system.
16. Number of prisoners now under parole.
17. Note. Miscellaneous remarks. Special provisions.

ANSWERS.

LOUISIANA (1913):

1. No such law.
2. No provision.
3. Board of control of the state penitentiary.
4. Recommend parole of first offenders and life termers to the Governor; board of pardons must first approve recommendation of life termers.
5. No petition necessary.
6. First offenders not guilty of treason, arson, rape or crimes against nature. Life termers having served at least one-third of the actual time when classed as eligible for reduction of sentence under existing laws.
7. General record in prison, and capability to live a law-abiding life in the future.

8. To remain employed and law-abiding, and report to the sheriff of the parish wherein he lives.
9. Any breach of parole conditions.
10. Any peace officer. No fees.
11. Serve balance of term.
12. Automatically.
13. Automatically.
14. Not given.
15. Local district system within the state.
16. Not given.
17. Sheriffs report to the board of control as to the conduct of the convicted prisoners residing in their parish.

MARYLAND (1914) :

1. No such law.
2. No provision.
3. Advisory board of parole, the present three members named in the act of Assembly; vacancies to be filled by the Governor.
4. Act jointly with the Governor, with certain exceptions, where Governor acts alone.
5. No petition necessary.
6. All prisoners in all institutions who have served one-third of their term; life termers after 20 years.
7. Conduct in prison; attitude of the community in which he will live; reliability of his sponsor.
8. That he will report to his sponsor and immediately report that fact to the board; that he will remain within fixed limits; that he will make a monthly written report, first submitting it to his sponsor; that he will not visit saloons or drink intoxicating beverages; that he will not associate with persons of bad reputation; that he will conduct himself honorably, and work diligently and honestly for his employer; that he will at all times answer promptly and truthfully all inquiries from the board and that he will live without violating the laws.
9. Any infraction of the above regulations.
10. Any officer. No fees.
11. Return to prison until the end of term.
12. At any time the board or Governor decide that he is worthy of discharge.
13. Automatically.
14. None.
15. Local district system.
16. Sixteen.
17. Great difficulty was experienced in securing the passage of this act. The advisory board is a paid board with salaries of \$1,500 each, and are empowered to appoint four parole officers to supervise the conduct of paroled prisoners. Up to date it has given great satisfaction.

MISSOURI (1913) :

1. No such law.
2. No provision.

3. Board of pardons and paroles of three members appointed by the Governor.
4. Recommend to the Governor.
5. Petition supported by statement from trial judge and prosecuting attorney; jury may also recommend parole; complete court record accompanies petition.
6. Any prisoner.
7. Previous history, physical and mental condition, general character, prison conduct, mitigating circumstances.
8. Abstain from bad associates and intoxicants; obey the laws, keep steady employment and report regularly.
9. Any infraction of the above conditions.
10. Warden's warrant by order of the Governor.
11. Serve balance of sentence.
12. Automatically at expiration of sentence unless pardoned sooner by the Governor.
13. Automatically.
14. Not stated.
15. State system.
16. Not stated.
17. The Governor still retains his pardoning power and can act without consultation or recommendation of the board.

TENNESSEE (1913) :

1. Any person over 18 years of age, convicted of any crime and sentenced to the penitentiary.
2. Minimum and maximum as now provided by law, subject to reduction according to the present commutation laws for good behavior.
3. Board of parole composed of the present board of prison commissioners.
4. To supervise the entire parole system.
5. None necessary.
6. Any person having served the minimum term prescribed by law and life termers who have served 25 years.
7. Discretion of the board.
8. Reside within certain districts, remain employed and obey the laws, avoid intoxicants and bad company.
9. Any infraction of the above regulations.
10. Written order of the board certified by any member thereof to any officer. No fees.
11. Serve balance of term.
12. Automatically at expiration of sentence or by pardon of the Governor.
13. Automatically.
14. Not given.
15. State system.
16. Not given.
17. This act has given general satisfaction up to date, and there has been practically no complaint as to the conduct of paroled prisoners.

UTAH (1913) :

- 1 Any prisoner except those guilty of treason or murder.

2. Minimum and maximum as provided by law.
3. Present board of pardons.
4. To parole prisoners either by direct action or upon recommendation of the board of corrections or prison warden.
5. No petition necessary.
6. Any prisoner having served the minimum and all prisoners now serving a definite sentence who have served the minimum.
7. Prison conduct, general health, ability to live a law-abiding life.
8. Must remain in the legal custody and under control of the warden or sheriff of the county wherein he lives; must abstain from crime and live a law-abiding life and avoid intoxicants and bad company.
9. Any violation of above.
10. Any officer. No fees.
11. Serve the balance of the term.
12. Automatically.
13. Automatically.
14. Not given.
15. State system.
16. Not given.
17. Every court must, within 30 days from the date of sentence, immediately mail to the secretary of the board of pardons a statement in writing setting out the maximum term provided by law for the particular offense, and the maximum term which in the opinion of the court the prisoner should serve. These reports are preserved by the secretary of the board and produced at the monthly meetings and serve as the manner of bringing these cases to the attention of the board. It has worked successfully thus far.

WEST VIRGINIA (1909) :

1. No such law.
2. No provision.
3. Board of parole consisting of warden of the penitentiary and two persons named by the Governor.
4. Recommend to the Governor.
5. Act upon written report and recommendation from the prison authorities and physician; also a statement of facts from the prosecuting attorney and the trial judge; attorneys are not encouraged to appear for the board.
6. Any prisoner in the discretion of the board having served the minimum provided by law for the particular offense.
7. Reformation, sufficient punishment and ability to live law-abiding life in the future.
8. Employment; abstinence from bad associates and intoxicants; subject to bond for \$50 or deposit of \$25 with the warden.
9. Any infraction of the rules, or breaking of existing laws.
10. Any state officer. No fees.
11. Serve the balance of the term for which sentenced.
12. Automatically.
13. Automatically.
14. Not given.
15. State system.

16. Not given.
17. No illiterate person, unless past 30 years of age at the time of sentence, will be paroled; the prison school furnishes ample opportunity for education, and all prisoners must avail themselves of its advantages before they can present an application. Re-parole granted after again serving time equal to that period served before original parole.